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September 10, 2003

ENTERED
Office of Proceedings

SEP 11 2003

Part of
Public Record

VIA FED EX

Vernon A. Williams, Secretary
Surface Transportation Board
1925 K Street, N.W.
Washington, D.C. 20423

**RE: STB Docket No. AB-55 (Sub-No. 568)
CSX Transportation, Inc. -- Abandonment
Exemption in Franklin County, Pennsylvania**

Dear Mr. Williams:

Please be advised that this office represents Frederick A. Fox, Kaye A. Fox and Frederick Armstrong Fox ("the Foxes"), who are parties to the above-referenced matter.

Enclosed herewith please find an original and 11 copies of the Foxes' Motion for an Order Staying CSXT's Right to Exercise its Abandonment Authority for the Portion of its Line that Extends from Fourth Street to Main Street in the Borough of Chambersburg, Franklin County, Pennsylvania, Pending the Board's Disposition of the Foxes' Petition for Permission to File An Amended Offer of Financial Assistance, or, Alternatively, to Reopen the Decision Served by the Board on March 9, 1999, pursuant to 49 CFR §1152.25(e), to Permit the Filing of a New Offer of Financial Assistance, *Nunc Pro Tunc*.

Please file the original and 10 copies, and stamp and return one of the copies to us in the enclosed self-addressed, stamped envelope.

BECKLEY & MADDEN

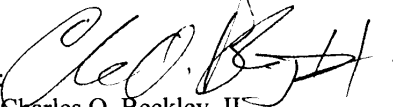
Vernon A. Williams, Secretary
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Page 2

If you need anything further from us to complete the filing of the Petition, then please do not hesitate to contact me. Thank you for your courtesy and assistance in this matter.

Very truly yours,

BECKLEY & MADDEN

By:


Charles O. Beckley, II

cc: Natalie S. Rosenberg, Esquire (via Fed Ex)
Lynn Y. MacBride, Esquire (via Fed Ex)
Thomas J. Finucane, Esquire (via Fed Ex)
David C. Finch, Assistant Borough Manager (via Fed Ex)
Mr. Frederick Armstrong Fox

BEFORE THE
SURFACE TRANSPORTATION BOARD



DOCKET NO. AB-55 (SUB-NO. 568X)

CSX TRANSPORTATION, INC.
ABANDONMENT EXEMPTION
IN FRANKLIN COUNTY, PENNSYLVANIA

ENTERED
Office of Proceedings

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**MOTION OF FREDERICK A. FOX, KAYE A. FOX AND FREDERICK
ARMSTRONG FOX FOR AN ORDER STAYING CSXT'S RIGHT TO
EXERCISE ITS ABANDONMENT AUTHORITY FOR THE PORTION
OF ITS LINE THAT EXTENDS FROM FOURTH STREET TO MAIN
STREET IN THE BOROUGH OF CHAMBERSBURG, FRANKLIN
COUNTY, PENNSYLVANIA, PENDING THE BOARD'S DISPOSITION
OF THE FOXES' PETITION FOR PERMISSION TO FILE AN
AMENDED OFFER OF FINANCIAL ASSISTANCE, OR,
ALTERNATIVELY, TO REOPEN THE DECISION SERVED BY THE
BOARD ON MARCH 9, 1999, PURSUANT TO 49 CFR §1152.25(E), TO
PERMIT THE FILING OF A NEW OFFER OF FINANCIAL
ASSISTANCE, *NUNC PRO TUNC***

DATED: September 10, 2003

Thomas A. Beckley, Esquire
Charles O. Beckley, II, Esquire

BECKLEY & MADDEN
212 North Third Street
P. O. Box 11998
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(717) 233-7691

Attorneys for Petitioners

BEFORE THE
SURFACE TRANSPORTATION BOARD



DOCKET NO. AB-55 (SUB-NO. 568X)

CSX TRANSPORTATION, INC.
ABANDONMENT EXEMPTION
IN FRANKLIN COUNTY, PENNSYLVANIA

**MOTION OF FREDERICK A. FOX, KAYE A. FOX AND FREDERICK
ARMSTRONG FOX FOR AN ORDER STAYING CSXT'S RIGHT TO
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AND NOW come Frederick A. Fox, Kaye A. Fox and Frederick Armstrong Fox (hereinafter referred to collectively as "the Foxes"), who, by and through their attorneys, Thomas A. Beckley, Esquire, Charles O. Beckley, II, Esquire, and Beckley & Madden, of Counsel, file this Motion for an Order Staying CSX Transportation, Inc.'s ("CSXT," herein), Right to Exercise its Abandonment Authority for the Portion of its Line that Extends from Fourth Street to Main Street in the Borough of Chambersburg, Franklin County, Pennsylvania, Pending the

Board's Disposition of the Foxes' Petition for Permission to File an Amended Offer of Financial Assistance, or, Alternatively, to Reopen the Decision Served by the Board on March 9, 1999, Pursuant to 49 C.F.R. §1152.25(e), to Permit the Filing of a New Offer of Financial Assistance, *Nunc Pro Tunc*, and in support thereof avers as follows:

I. BACKGROUND

1. CSXT commenced this proceeding on November 16, 1998, by filing a petition for exemption. CSXT sought to exempt from the prior approval requirements of 49 U.S.C. §10903 its plan to abandon a portion of its railroad known as the Baltimore Service Lane, Lurgan Subdivision, extending from Fourth Street to Commerce Street in the Borough of Chambersburg, Franklin County, Pennsylvania. For purposes of this motion, the section of rail line which CSXT intends to abandon may be divided into three separate parts: (1) the Fourth Street to Main Street Section; (2) the Main Street to South Street Section; and (3) the South Street to Commerce Street Section.

2. In its petition for exemption, CSXT indicated that Chambersburg Engineering Company ("Chambersburg Engineering") was the only rail shipper located along the entire length of railroad which CSXT wants to abandon. CSXT stated that, despite the abandonment, Chambersburg Engineering would not lose rail service, because CSXT planned to reclassify the Fourth Street to Main Street Section as industrial sidetrack.

3. On or about November 23, 1998, the Borough of Chambersburg ("the Borough") filed a request for interim trail use/rail banking under the National Trails System Act, 16 U.S.C. §1247(d). The Borough's trail use request encompassed both the Main Street to South Street Section and the South Street to Commerce Street Section of CSXT's rail line.

4. On March 9, 1999, the Board served a Decision which, *inter alia*: (a) granted CSXT's petition for exemption; (b) granted the Borough's request and issued a notice of interim trail use ("NITU") for the Main Street to South Street and the South Street to Commerce Street Sections; and (c) established March 19, 1999, as the deadline for filing offers of financial assistance.

5. On March 12, 1999, the Foxes timely filed an offer of financial assistance ("OFA"), pursuant to which they sought to purchase the Main Street to South Street Section of CSXT's railroad. On March 23, 1999, the Board served a decision which found the Foxes to be financially responsible, and postponed the effective date of the exemption authorizing abandonment of the Main Street to South Street Section of the line, in order to allow the OFA process to proceed.

6. Through a series of decisions served on March 22, 2000, January 8, 2001, March 30, 2001, June 19, 2001, September 10, 2001, December 28, 2001, June 24, 2002, September 30, 2002, January 31, 2003, and July 29, 2003, the Board has extended both the deadline for CSXT to exercise the abandonment authority granted to CSXT in March, 1999, and the NITU negotiating period, until January 30, 2004. CSXT has not yet consummated the abandonment of its rail line.

7. In December, 2001, or January, 2002, Chambersburg Engineering went out of business. On July 30, 2002, Chambersburg Engineering conveyed all of its real property -- which is the property served by the Fourth Street to Main Street Section of CSXT's line and consists of approximately 25 acres and 250,000 square feet of building space -- to New Franklin Properties, LLC (New Franklin Properties), a Pennsylvania limited liability company wholly owned by Frederick Armstrong Fox.

8. Due to this change in circumstances, i.e. Chambersburg Engineering's demise and New Franklin Properties' acquisition of its real property, the Foxes filed with the Board on August 15, 2003, a Petition to Amend their Offer of Financial Assistance, or, Alternatively, to Reopen the Decision Served by the Board on March 9, 1999, Pursuant to 49 C.F.R. §1152.25(e), to Permit the Filing of a New Offer of Financial Assistance, *Nunc Pro Tunc* ("petition to amend OFA," herein).

9. The Foxes want to amend their OFA to include the Fourth Street to Main Street Section of CSXT's line, which serves the property formerly owned by Chambersburg Engineering, and now owned by New Franklin Properties and controlled by Frederick Armstrong Fox. The Foxes plan to develop this property, along with their Black Avenue properties (which are served by the Main Street to South Street Section of CSXT's line, for which the Foxes have already filed an OFA), into an integrated industrial park, whose anchor tenants will be the Foxes' own manufacturing and service businesses. The Foxes view the continued availability of rail service as essential to the success of this project.

10. CSXT has taken no position concerning the Foxes' petition to amend their OFA. CSXT has previously indicated to the Board, however, that CSXT will sell the Fourth Street to Main Street Section to the Foxes under the OFA process. *See January 28, 1999, Reply of CSXT to Protest to Petition for Exemption Filed by the Foxes*, p. 3 ("If the Foxes choose to purchase this trackage [the rail line between Fourth Street and Main Street and between Main Street and South Street] under the Board's OFA process, CSXT will sell them the rail line.").

11. On September 9, 2003, the Foxes' Counsel, Charles O. Beckley, II, Esquire, spoke by telephone with Thomas J. Finucane, Esquire, who serves as the Solicitor for the Borough of Chambersburg ("the Borough"). Mr. Finucane indicated that the Borough intends to oppose the Foxes' petition to amend their OFA, despite the Borough's failure to file a timely reply to the petition. *See* 49 C.F.R. §1104.13(a).

12. Mr. Finucane indicated further that the Borough intends to attempt to purchase the Fourth Street to Main Street section of CSXT's rail line -- the section of line that forms the subject of the Foxes' petition -- directly from CSXT, outside of the OFA process. Mr. Finucane stated that the Borough would then be willing to negotiate with the Foxes to sell the Fourth Street to Main Street Section to them, in exchange for the Foxes' conveyance of the Main Street to South Street Section to the Borough, the Foxes agreement to underwrite the cost of the removal of the rails from the Main Street to South Street Section, the Foxes' payment to the Borough of an undetermined sum of money and the Foxes' agreement to grant to the Borough a right-of-way over certain of the Foxes' properties.

13. The Foxes previously rejected a similar proposal from the Borough. The Foxes filed their petition to amend their OFA in order to preserve rail service to their Black Avenue properties and the newly-acquired former Chambersburg Engineering property, which, as noted previously, the Foxes plan to develop into an integrated industrial park. Purchasing the Fourth Street to Main Street and the Main Street to South Street Sections of CSXT's rail line through the OFA process is the only means by which the Foxes can ensure continued rail service to their properties.

14. The Borough's attempt to purchase the Fourth Street to Main Street Section directly from CSXT now, almost a month after the Foxes' filing of their petition to amend their OFA, represents nothing more than an obvious and cynical attempt by the Borough to render the Foxes' petition moot.

15. The unvarnished truth is that the Borough does not want and has no legitimate railroad use for the Fourth Street to Main Street Section. The Borough wants to acquire that Section simply to employ it as leverage to extract certain concessions from the Foxes. The Borough should not be permitted to "end run" the Board's procedures in this manner, and the Board should issue an order prohibiting CSXT from selling or conveying the Fourth Street to Main Street Section to the Borough or to any other person or entity until the Board has disposed of the Foxes' petition to amend their OFA.

II. RELIEF REQUESTED

16. The Foxes respectfully request the Board to enter an Order precluding CSXT from exercising its abandonment authority for the portion of its rail line that extends from Fourth Street to Main Street in the Borough of Chambersburg, Franklin County, Pennsylvania, and prohibiting CSXT from selling or conveying the Fourth Street to Main Street Section to the Borough of Chambersburg or to any other person or entity, pending the Board's disposition of the Foxes' petition to amend their OFA to include the Fourth Street to Main Street Section. Additionally, in order to permit the Foxes and CSXT to bring this matter to completion promptly, the Foxes respectfully request the Board to expedite its consideration of the merits of the Foxes' petition to amend their OFA.

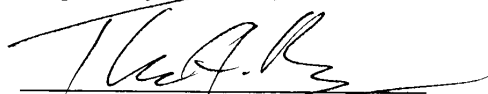
17. The Foxes' Counsel spoke by telephone with Natalie S. Rosenberg, Esquire, Counsel for CSXT, on September 10, 2003, and Ms. Rosenberg indicated that CSXT does not intend to oppose this motion, although CSXT hopes that the Board will decide the merits of the Foxes' petition to amend their OFA as soon as reasonably possible.

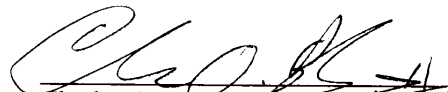
DATED: September 10, 2003

Of Counsel

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Respectfully submitted,


Thomas A. Beckley, Esquire


Charles O. Beckley, II, Esquire

Attorneys for Petitioners

CERTIFICATE OF SERVICE

I Charles O. Beckley, II, Esquire, hereby certify that a copy of the foregoing document was served this day upon the persons and in the manner indicated below:

SERVICE BY FED EX:

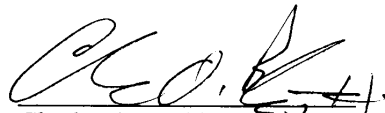
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DATED: September 10, 2003


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